



## **CITY OF SAN DIEGO**

# **PROPOSED SMALL LOCAL BUSINESS ENTERPRISE ("SLBE") PROGRAM (Effective July 2010)**

Administration Department

Equal Opportunity Contracting Program  
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## **POLICY**

It is the City of San Diego's policy to encourage greater availability, capacity development, and contract participation by Small Local Business Enterprises ("SLBEs") in City contracts. This policy is, in part, intended to further the City's compelling interest to stimulate economic development through the support and empowerment of the local community, ensure that it is neither an active nor passive participant in marketplace discrimination, and promote equal opportunity for all segments of the contracting community.

## **INTENDED IMPACTS**

The SLBE Program is intended to:

- Provide an additional race- and gender-neutral tool for the City to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in City contracts;
- Further the City's public interest to foster effective broad-based competition from all segments of the contractor, consultant and vendor community, including, but not limited to, disadvantaged business enterprises, emerging business enterprises, minority business enterprises, woman business enterprises, small business enterprises, microbusiness enterprises, disabled veteran business enterprises and local business enterprises; and
- Provide additional avenues for the development of new capacity and sources of competition for City contracts from the growing pool of small and locally based businesses.

## **OBJECTIVES**

To meet the objectives of this Program, the City is committed to:

- A. Increasing the participation of Small Local Business Enterprises ("SLBEs") and Emerging Local Business Enterprises ("ELBEs") in City contracting, and, to the extent possible, ameliorating through race- and gender-neutral means any disparities in the participation of minority business enterprises or women business enterprises on City contracts.
- B. Regularly evaluating the progress of the Program using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, and/or curtailment;
- C. Establishing a Goal Setting Committee ("GSC") to provide guidance on the implementation of the rules under this Policy. The City's Chief Operating Officer

shall approve the size and composition of the GSC as recommended by the Administration Department Director. The GSC is to be chaired by the EOCP Manager. Members of the GSC shall include management level representatives from the City's Purchasing & Contracting, Public Works, Redevelopment Agency, and other City departments deemed appropriate. The City Attorney will provide legal guidance as required. The EOCP Manager and Director of Administration shall be members of the GSC;

- D. Provide accountability and accuracy in reporting program results through the implementation of a mandatory centralized bidder registration process capable of identifying with specificity the universe of firms that are available and interested in bidding on and /or performing on City contracts, and of providing the means of tracking actual City bids, contract awards, and prime contract and subcontract payments to registered bidders on the basis of firm ownership status, commodity or sub-industry codes, firm location, and firm size. Accordingly, Prime Contractors and Subcontractors will be required to register and input data into the Vendor Registration System or other related forms and systems as a condition of engaging in business with the City.

## **ROLES AND RESPONSIBILITIES**

At a minimum, the EOCP Manager shall:

1. Report to the Mayor and the City Council on at least an annual basis the City's progress towards satisfying SLBE program objectives;
3. Formulate Program waivers, improvements and adjustments to the GSC goal-setting methodology and other Program functions;
4. Have substantive input in a contract specification review process to be undertaken in advance of the issuance of City's RFPs and bid solicitations to ensure that contract bid specifications are not unnecessarily restrictive and unduly burdensome to small, local, disadvantaged, minority-owned, woman-owned and other businesses;
5. Receive and analyze external and internal information including statistical data and anecdotal testimonies it deems appropriate to effectively accomplish its duties;
6. Monitor and support the implementation of the rules under this Program; **and**
7. Explore additional policies and programs to enhance the effectiveness of the SLBE program, including but not limited to cooperative agreements with other governmental agencies.

At a minimum, the Goal Setting Committee may:

1. Meet as often as it deems necessary to accomplish its duties but not less than twice annually;
2. Develop the SLBE/ELBE goal setting methodology to be implemented by the EOCP Manager and Engineering and Capital Projects Department on a contract-by-contract basis;
3. Monitor and support the implementation of the rules under this Program policy; and
4. Review and recommend sizing and delivery methods of upcoming construction projects to enhance participation levels of SLBEs/ELBEs for approval by the City's Executive Team.

## TERMS AND DEFINITIONS

***Award*** – The final selection of a bidder or offeror for a specified prime contractor subcontract dollar amount. Awards are made by the City to prime contractors, consultants or vendors or by prime contractors, consultants or vendors to subcontractors, subconsultants or sub-vendors, usually pursuant to an open invitation for bid (“IFB”) or request for proposal (“RFP”) process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are to be paid to a bidder or offeror under an awarded contract.)

***Bid Incentives*** – Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of SLBE firms in competition with other firms. These bid incentives may be applied to all solicitations, contracts, and letter agreements for Architecture and Engineering services, Construction, Goods & Services, and Professional services including change orders and amendments.

***Bidder*** – A firm submitting a price or proposal in response to an Invitation for Bid (“IFB”) or Request for Proposal (“RFP”).

***Broker*** - An individual or firm employed by others to plan and organize sales or negotiate contracts for a commission.

***City*** – Refers to the City of San Diego, California.

***Commercially Useful Function*** – An SLBE/ELBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SLBE/ELBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an SLBE/ELBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SLBE/ELBE firm is to be paid under the contract is commensurate with the work it is actually performing and the SLBE/ELBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SLBE/ELBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SLBE/ELBE participation, when in similar transactions in which SLBE/ELBE firms do not participate, there is no such role performed.

***Emerging Business Enterprise (“EBE”)*** - Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business;

and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$2.75 million - Construction
- \$1.5million - Specialty Construction
- \$1.5million – Goods/Materials/Services
- \$ 1.0 million – Trucking
- \$ 750,000 – Professional Services and Architect/Engineering

If a business has not existed for 3 years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business. This definition is subsumed within the definition of Emerging Local Business Enterprises.

***Emerging Local Business Enterprise (“ELBE”)*** – A Local Business Enterprise that is also an Emerging Business Enterprise.

***Equal Opportunity Contracting Program (EOCP) Manager*** - The City employee responsible for the oversight, tracking, monitoring, administration, and implementation of the SLBE program, ensuring that compliance with contract participation requirements is maintained, and overall program goals and objectives are met

***Goal*** – A non-mandatory annual aspirational percentage goal for SLBE/ELBE contract participation is established annually for Architecture and Engineering, Construction, Goods & Services and Professional services. Mandatory percentage goals for SLBE/ELBE subcontract participation may be established on a contract-by-contract basis.

***Goal Setting Committee*** – A committee established by the Administration Department Director and approved by the Chief Operating Officer of the City (that includes management level representatives from: Purchasing & Contracting, Public Works and Redevelopment Agency) and chaired by the Equal Opportunity Contracting (EOC) Program Manager that establishes annual SLBE Program goals for the City based upon industry categories, vendor availability, and project-specific characteristics.

***Good Faith Efforts*** – Documentation of the Bidder’s intent to comply with SLBE Program goals and procedures, including, but not limited to the following:  
(1) documentation within a bid submission or proposal reflecting the Bidder’s commitment to comply with SLBE Program goals as established by the Goal Setting Committee for a particular contract; or (2) documentation of efforts made towards achieving the Program goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of subcontract opportunities on the City web site; solicitations of bids from all qualified SLBE/ELBE firms listed in Equal Opportunity Contracting Program’s SLBE/ELBE Directory of certified SLBE/ELBE firms; correspondence from qualified SLBE/ELBE firms documenting their unavailability to perform SLBE/ELBE contracts; documentation of

efforts to subdivide work into smaller quantities for subcontracting purposes to SLBE/ELBE firms; documentation of efforts to assist SLBE/ELBE firms with obtaining financing, bonding, or insurance required by the bidder; and documentation of consultations with trade associations and consultants that represent the interests of small and local businesses in order to identify qualified and available SLBE/ELBE subcontractors.)

***Independently Owned, Managed, and Operated*** – Ownership of a SLBE/ELBE firm must be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the SLBE/ELBE eligibility requirements shall not be eligible to participate in the Program. Moreover, the day-to-day management of the SLBE/ELBE firm must be direct and independent of the influence of any other businesses that cannot themselves qualify under the SLBE/ELBE eligibility requirements.

***Industry Categories*** – Procurement groupings for City contracts for purposes of the administration of the Programmatic elements shall be inclusive of Architecture and Engineering, Construction, Professional services, and Goods & Services procurement (manufacturing, wholesale and retail, and non-professional services). Industry Categories may also be referred to as “business categories.”

***Joint Venture*** - An association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

***Local Business Enterprise (“LBE”)*** - A firm having a Principal Place of Business and a Significant Employment Presence in San Diego City or County, California that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.

***Minor Construction Program*** – A program developed for bidding exclusively among SLBE/ELBE Construction firms.

***Minor Consultant/Services Program*** – A program developed for bidding exclusively among SLBE/ELBE Consultant/Service firms.

***Points*** – The quantitative assignment of value for specific evaluation criteria in the selection process.

***Prime Contractor*** – The vendor or contractor to whom a purchase order or contract is awarded by the City for purposes of providing goods or services to the City.

***Principal Place of Business*** – A location wherein a firm maintains a physical office and through which it obtains no less than fifty percent of its overall customers or sales dollars.



**Protégé** – A firm that has been approved, is an active participant in the City of San Diego’s Mentor-Protégé Program, has signed the required program participation agreement and has been assigned a mentor.

**Public Works Contract** – A contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works.

**Responsible** - a bidder’s quality, fitness and capacity to perform the particular requirements of the proposed work.

**Responsiveness** - a bidder’s compliance with the bidding instructions.

**Services** – All work provided by persons other than consultants. It includes maintenance contracts. It excludes public works and goods.

**Significant Employee Presence** – No less than twenty-five percent of a firm’s total number of employees are domiciled in either the City of San Diego and/or San Diego County.

**SLBE/ELBE Plan Execution Certification (SLBE Form – C)** - The form certifying the general contractor’s intent to use a SLBE/ELBE subcontractor, verifying that an agreement has been executed between the prime and the SLBE/ELBE.

**SLBE/ELBE Directory** - A listing of the small and emerging local businesses that have been certified by the EOCP for participation in the SLBE Program.

**SLBE/ELBE Certification/Re-certification Application (SLBE Form – R)** – This form shall be completed by Small and/or Emerging Local Business Enterprises (SLBEs/ELBEs) when applying for and/or recertifying SLBE/ELBE status for participation in the City’s Small Local Business Enterprise Program. This form shall be completed every two years by certified Small and/or Emerging Local Business Enterprises by the anniversary date of their original certification.

**SLBE/ELBE Schedule for Subcontractor Participation (SLBE Form – S)** – This form must be completed by all non-SLBE firms that subcontract to SLBE firms. A form must be submitted for each SLBE/ELBE subcontractor. This form(s) must be reviewed and approved by the Director of EOCP before contract award.

**Small Business Enterprise (“SBE”)** - Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$5.0 million - Construction
- \$3.0 million - Specialty Construction
- \$3.0 million – Goods/Materials/Services

\$2.0 million – Trucking

\$1.5 million – Professional Services and Architect/Engineering

California State certified Micro and Disabled Veteran Owned business enterprises shall also satisfy the requirements to be defined as a Small Business Enterprise.

If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business. This definition is subsumed within the definition of Small Local Business Enterprises.

***Small Local Business Enterprise (“SLBE”)*** -A Local Business Enterprise that is also a Small Business Enterprise.

***Spend Dollars*** – Dollars actually paid to prime and / or subcontractors and vendors for City contracted goods and/or services.

***Subcontractor/Sub-consultant*** – Any vendor, consultant or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City.

***Vendor Registration System*** - A web-based software application used by the City of San Diego to track and monitor subcontractor availability and utilization (i.e., “Spend” or “Payments”) on City contracts.

## **PROGRAM ELEMENTS – PUBLIC WORKS CONTRACTS**

### **I. Major Public Works Projects**

A. Contracts valued at **\$1,000,000 and above** shall, on a contract-by-contract basis, include a mandatory subcontractor participation requirement for SLBEs and ELBEs.

1. Prime bidders must achieve the mandatory subcontractor participation requirement or demonstrate good faith efforts.
2. Prime bidders shall submit, at the time of bid, on the appropriate form, the name of all SLBE and/or ELBE subcontractors and both the percentage of subcontracting and the work to be performed by the SLBE and /or ELBE.
3. A SLBE or ELBE bidder may count their own participation toward achieving the mandatory goal as long as the SLBE or ELBE prime bidder performs 51% of the contract value.

B. Contracts Valued **over \$500,000 and under \$1,000,000** shall, on a contract-by-contract basis, include either the mandatory subcontractor participation requirement described above and/or the following:

1. 5% bid discount for SLBEs/ELBEs.
2. A bid discount based on the amount of SLBE/ELBE utilization by a non SLBE/ELBE up to a maximum of 5%.

Bid discounts would not apply if the award to the SLBE/ELBE would result in a total contract cost of \$50,000 in excess of the low bid.

In the event of a tie bid between a discounted bidder and a non-discounted bidder, the discounted bidder will be awarded the contract.

### **II. Minor Public Works Projects**

A. Contracts valued **over \$250,000 up to \$500,000 will be considered Minor Construction Projects** and will be awarded through a competitive bid process open only to City of San Diego certified SLBEs/ELBEs. Should no responsible bids received, these projects will be made available to all bidders and subject to requirements listed in “Major Public Works Projects” sections “A or B” above.

B. Contracts valued at \$250,000 and below will also be considered Minor Construction Projects and will be awarded through a competitive bid process open only to City of San Diego certified ELBEs unless there are less than two firms available at which it will be awarded through a competitive process open only to City of San Diego certified ELBEs SLBEs. Should no responsible bids be received, these projects will be made available to

all bidders and subject to requirements listed in “Major Public Works Projects” Section “B” above.

### III. Mentor Protégé Program

A. The City’s Mentor Protégé Program designed and approved in 1999 is incorporated into this Program. Mentors will be expected to assist their protégés with bidding on City projects. Examples of the types of assistance include but are not limited to: identifying potential city projects to submit bids, providing guidance and assistance with completing city required paperwork, providing feedback on bids submitted but not awarded, providing assistance, as needed, on city projects awarded and continue carrying-out the responsibilities delineated in the Mentor Protégé Program Performance Measurement section.

B. Protégés shall submit their Program application and signed participation agreement in lieu of the SLBE application to receive certification. Protégés will be certified for two years from the date of approval and must reapply through the normal process once the two year period has been satisfied.

### IV. Contract Sizing and Delivery Methods

A. The City’s Executive Team will review recommendations from the Goal Setting Committee for sizing and delivery methods for upcoming construction projects on at least an annual basis. Annual targets for sizing and delivery methods will be established and monitored with adjustments made as necessary.

V. Joint Ventures (“JV”) – The City may allow for Joint Venture bid discounts on specific projects. Projects that allow for JV bid discounts will be designated in bid documents. A business that is bidding or competing for City contracts may partner with a certified SLBE or ELBE to compete for contracts as a joint venture. A joint venture must be between two entities with the same discipline or license as required by the City. Joint ventures will receive bid discounts depending on the SLBE or ELBE percentage of participation. To be eligible for a discount, a Joint Venture Agreement must be approved by the City’s EOCP Manager at the time of bid submittal. The maximum allowable discount shall be 5%. The parties must agree to enter in the relationship for at least the life of the projects.

A. Joint Venture Agreements – A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement at least two weeks prior to the bid due date. Copies of the JV applications are available upon request to the Equal Opportunity Contracting Program Manager. Each agreement or management plan must include, but not limited to the following:

1. Detailed explanation of the financial contribution for each partner;
2. List of personnel and equipment used by each partner;
3. Detailed breakdown of the responsibilities of each partner;

4. Explanation of how the profits and losses will be distributed;
5. Description of the bonding capacity of each partner; and
6. Management or incentive fees available for any one of the partners (if any).

B. Commercially Useful Functions Performed by Joint Venture Partners – Each JV partner must perform a “commercially useful function” as the term is defined herein. An SLBE or ELBE that relies on the resources and personnel of a non-SLBE or ELBE firm will not be deemed to perform a “commercially useful function”.

C. License Requirements – Each JV partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a joint venture is bidding on a single trade project, at the time of bid submittal, each joint venture partner must possess the requisite specialty license for that trade bid.

D. Delineation of Work – The SLBE or ELBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the SLBE or ELBE partner performs in the normal course of its business. The Joint Venture Participation Form must specify the project bid items to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

E. Responsibilities of the SLBE or ELBE Joint Venture Partner

1. The SLBE or ELBE partner must share in the control, management responsibilities, risks and profits of the joint venture in proportion with the level of participation in the project.
2. The SLBE or ELBE partner must perform work that is commensurate with its experience.
3. The SLBE or ELBE partner must use its own employees and equipment to perform its portion of the project.
4. For construction contracts only, the joint venture as a whole, must perform bid item work that equals or exceeds twenty-five percent (25%) of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a joint venture discount.

## VI. Bonding and Insurance

A. The City, at its discretion, may consider exceptions to its bonding, and/or insurance requirements depending on the type of contract and whether the City determines that the bonding and or insurance requirements would deny the SLBE/ELBE an opportunity to perform the contract which the SLBE/ELBE has shown itself otherwise capable of performing. The City may also consider Owner and/or Contractor Controlled Insurance and Bonding Programs on specific projects when feasible. Decisions regarding these options will require the City’s Executive Team approval.

B. The City may also partner with other Agencies/Organizations to provide bonding and/or insurance assistance to SLBE/ELBEs.

## VII. Waivers

A. The intent of this program shall be to maximize the opportunity for SLBE/ELBE prime and subcontract participation, to enhance contractor availability and to promote greater capacity development and competition in the construction industry. Accordingly, Equal Opportunity Contracting Program, in consultation with the City department issuing the bid, shall only consider issuing formal waivers of mandatory subcontracting goals on this program on a limited contract-by-contract basis when one or more of the following conditions is present:

1. Based upon an historical analysis of contracts of a similar size and industry type, there are no significant opportunities for subcontractors to perform a commercially useful function on this contract;
2. Based upon an analysis of prior City contracts of a similar nature and current availability data, there are no subcontractors available to perform a portion of the work and/or;
3. Based upon an historical analysis of contracts of a similar size and industry type, the nature of available subcontract opportunities will lead to gross inefficiencies that will significantly and adversely affect the overall cost of the project.

Final decisions regarding the applicability of this program to a contract shall rest with EOCP. In the event EOCP issues a waiver of this program's application to a given contract, that program waiver and the basis for the waiver shall be clearly stated in the bid documents. Moreover, the EOCP Manager shall prepare a justification memorandum that explains the basis and factual findings supporting that waiver decision. Program waiver justification memoranda shall be approved by the Administration Department Director and reported to the Mayor and the members of the City Council on a quarterly basis.

## **PROGRAM ELEMENTS – CONSULTANT CONTRACTS**

### I. Request for Proposal (RFP) Language

A. All request for proposals shall include a requirement for all proposers to specifically demonstrate their commitment to diversity.

### II. Voluntary Goals

A. Professional services contracts valued at over \$50,000 shall have a 20% voluntary SLBE/ELBE participation goal. Preference points will be awarded based on the participation levels of SLBE/ELBE included in proposals. Preference points will only be applied to proposers that achieve a “qualified”/“acceptable” status or above in interview/selection process.

B. Preference Points - A maximum of 10 preference points can be earned for including SLBEs/ELBEs as sub-consultants. Points will be awarded as follows:

1. 20% participation – 5 points
2. 25% participation – 10 points

C. SLBE/ELBEs will earn 12 points as a prime consultant

## II. Minor Consultant/Services Program

A. The City may establish a Minor Consultant/Services Program similar in concept to its Minor Construction Program. The Assistant Chief Operating Officer, Administration Department Director, Equal Opportunity Contracting Program Manager, Purchasing Department Director and Public Works Deputy Chief may select certain contracts with a total project value of \$500,000 or less to be awarded through a competitive proposal process open only to City of San Diego certified SLBEs/ELBEs.

B. Consideration may be given to whether or not there are at least three firms available to propose on the project as a condition of selecting a project.

## **PROGRAM ELEMENTS – GOODS & SERVICES**

### I. Voluntary Goals

A. All goods and services contracts valued at over \$50,000 shall have a 20% voluntary SLBE/ELBE participation goal. Preference points will be awarded based on the participation levels of SLBE/ELBE included in proposals.

### II. Bid Discounts

A. For all goods and service contracts valued at over \$50,000, the City shall apply a 2% bid discount for either: 1). SLBE/ELBE prime contractors or 2). Prime contractors meeting the 20% voluntary SLBE/ELBE goal.

B. The discount will not apply if the award to the discounted bidder would result in a total contract cost of \$10,000 in excess of the low, non-discounted bidder.

## **PROGRAM ELEMENTS – STRATEGIC ECONOMIC DEVELOPMENT PARTNERSHIPS (OFFICE OF SMALL BUSINESS, ECONOMIC DEVELOPMENT, CDBG OFFICE)**

### I. Small and Disadvantaged Business Pilot

A. The Office of Small Business will provide the following services to Local Small, Emerging and/or Disadvantaged Businesses as a pilot through fiscal year 2010 at which time the program will be evaluated and a determination made regarding the services,

funding level, and effectiveness. The following services will be provided in this initial phase:

1. Outreach to local small, emerging and disadvantaged businesses.
2. Evaluation of business competencies.
3. Technical assistance to address gaps in competencies.
4. Referrals to Minor Construction/Mentor Protégé Programs and certification services.

## **PROGRAM ELEMENTS - COMPLIANCE**

### **I. Maintaining Participation Levels**

A. Credit and/or preference points are earned based on the level of participation proposed prior to the award of a contract. Once a project begins, it is important to achieve and maintain the SLBE/ELBE participation levels for which credit/preference points were earned. Prime contractors and consultants must maintain the SLBE/ELBE percentages indicated at the time of contract award and throughout the term of the contract.

B. Should the City modify the original scope of work, the prime contractor or consultant must make reasonable efforts to maintain the SLBE/ELBE participation for which credit/preference points were earned. If participation levels must be reduced, approval must be received from the EOCP Manager prior to making changes.

C. Prime Contractors are required to notify and obtain written approval from the EOCP Manager in advance of any reduction in subcontract scope, termination, or substitution for a designated SLBE/ELBE subcontractor. Failure to do so shall constitute a material breach of its contract with the City.

D. Should the prime contractor or consultant fail to maintain the SLBE/ELBE participation listed at the time the contract is awarded, and has not received prior approval from the Equal Opportunity Contracting Program Manager, the City may seek any and all remedies available under law, which may include contract suspension, termination, and/or debarment, upon approval by the Mayor and/or his designee.

E. Submission of Final Summary Report – Prime Contractors and consultants must submit a Final Summary Report including all subcontracting/subconsulting activity during the project to City of San Diego within fifteen (15) calendar days after Final Inspection of contract work, or for consultants, at the time of submittal of final deliverables. Failure to comply may result in assessment of liquidated damages or withholding of retention. Within 10 business days of submission, EOCP shall be required to review and verify one hundred percent (100%) of subcontract participation reported in the Final Summary Reports prior to approval and release of final retainage to the prime contractors. In the event such withheld retainage includes sums that are due to



subcontractors for successfully completed work, EOCP may authorize direct payment by the City of that portion of the withheld retainage directly to the subcontractors.

NOTE: EOCP will only authorize direct payment to subcontractors if no other remedial measures are effective, and in consultation with the City Attorney.

F. California subcontractor substitution laws apply to this program.

## **PROGRAM ELEMENTS - SLBE PROGRAM PERFORMANCE REVIEW**

A. The Administration Department Director or designee shall monitor the implementation of this Policy and the progress of this Program. On at least an annual basis, the Administration Department Director or designee shall report to the Mayor and City Council on the goals established and the progress of achieving the goals for awards to certified SLBE firms, if any goals change, provide an explanation for the change, reporting both dollars awarded and expended. In addition, the Administration Department Director or designee shall annually report on the progress in achieving the stated Program Objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, and removing barriers to and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on City contracts.

B. The City shall periodically review the SLBE Program to determine whether the various contracting procedures used to enhance SLBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the stated Program Objectives. The Mayor may conduct a public hearing at least once every two years in order to solicit public comments on the Program.

C. Independent Audit - EOCP shall maintain contract files that contain good faith documentation and Final Summary Reports submitted by all bidders for a minimum of three years after the close of each contract. The City's Independent Auditor or some other independent body or auditing firm identified by EOCP shall conduct periodic audits of the overall operation the program and the good faith documentation, as submitted, in no less than twenty-five percent (25%) of the construction contracts issued. These audits may include:

1. Verification of documentation reflecting bidders' good faith efforts.
2. Verification of the SLBE/ELBE certification process.
3. Verification of dollar payments to subcontractors and percentage subcontract participation as represented by bidders in Final Summary Report forms.
4. A review and summary of program waivers and the adequacy of justifications provided by EOCP for such waivers.
5. A review of EOCP implementation and compliance with the Small Local Business Enterprise Program standards and procedures.

6. A cost-benefit analysis of the bid discounts, minor construction projects including an assessment of administrative costs to the City, bidder compliance costs, and an assessment of the level of subcontract participation with and without application of the program, and recommendations regarding program amendments, program continuation, or program termination.

Findings from these audits shall be reported to EOCP, the Mayor and the City Council. To the extent any discrepancies appear regarding submitted bidder documentation, the findings of the Auditor shall be referred to EOCP for the appropriate enforcement actions for falsification and fraud.

- D. Conduct and report results of a Performance Audit within 18 months of initial City Council approval of the SLBE Ordinance.

### **ELIGIBILITY FOR THE SLBE PROGRAM**

A. For the purpose of this program, a firm will be certified as an ***Emerging and Local Business Enterprise (ELBE)*** with the EOC Office upon its submission of a completed certification form (SLBE/ELBE Form-R), supporting documentation, and a signed affidavit stating that it meets all of the ELBE eligibility criteria as set forth below:

1. is not a broker, and is an independently owned and operated for profit business concern that is not a subsidiary of another business; and that is not dominant in its field of operation and is performing a commercially useful function;
2. whose average gross annual receipts in the prior three fiscal years do not exceed:

\$2.75 million - Construction  
\$1.5million - Specialty Construction  
\$1.5million – Goods/Materials/Services  
\$ 1.0 million – Trucking  
\$ 750,000 – Professional Services and Architect/Engineering

If a business has not existed for 3 years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business. This definition is subsumed within the definition of Emerging Local Business Enterprises.

B. For the purpose of this program, a firm will be certified as a ***Small and Local Business Enterprise (SLBE)*** with the EOC Office upon its submission of a completed certification form (SLBE/ELBE Form-R), supporting documentation, and a signed affidavit stating that it meets all of the SLBE eligibility criteria as set forth below:

1. is not a broker, and is an independently owned and operated for profit business concern that is not a subsidiary of another business; and that is not

dominant in its field of operation and is performing a commercially useful function;

2. whose average gross annual receipts in the prior three fiscal years do not exceed:

\$5.0 million - Construction

\$3.0 million - Specialty Construction

\$3.0 million – Goods/Materials/Services

\$2.0 million – Trucking

\$1.5 million – Professional Services and Architect/Engineering

California State certified Micro and Disabled Veteran Owned business enterprises shall also satisfy the requirements to be defined as a Small Business Enterprise.

If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business

The following are subsumed within the definition of Small and/or Emerging Local Business Enterprises:

3. Is a Local Business Enterprise as defined by this Policy with a principal place of business and significant employment presence in the City and/or County of San Diego, California; and

4. The business has been in operation for 12 consecutive months.

C. Upon receipt of SLBE/ELBE certification or re-certification applications, the EOC Program Manager or designated EOC staff shall review all enclosed forms affidavits and documentation to make a prima facie determination as to whether the applicant satisfies the SLBE/ELBE eligibility requirements as set forth in this policy. Applicants determined ineligible to participate as a SLBE/ELBE shall receive a letter from the EOC Program Manager stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for one year after the date of the notice of denial of eligibility.

D. Applicants determined eligible to participate in the SLBE program shall submit a completed re-certification form (SLBE-R) every two years to the EOC Office for review and continued certification. However, upon application for re-certification, an SLBE/ELBE firm must be an independently owned and operated business concern, and maintain a Principal Place of Business and Significant Employment Presence in the City and/or County of San Diego in accordance with Section V. "Eligibility for the SLBE Program" of this Policy.

E. In the course of considering the certification or re-certification status of any SLBE/ELBE firm, the EOC Program Manager or his or her designees shall periodically conduct audits and inspect the office, job site, records, and documents of the firm, and shall interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the SLBE Program is maintained.

## **RECERTIFICATION CRITERIA**

A. SLBE/ELBEs will be certified for a two year period at which time they will be required to reapply. To qualify for recertification, SLBEs/ELBEs must meet all eligibility standards

B. A bidder may not count towards its SLBE/ELBE participation the amount subcontracted to an SLBE/ELBE firm that is not certified with the City.

C. An SLBE/ELBE firm may have its SLBE eligibility permanently revoked by the EOC Program Manager if it fails to perform a Commercially Useful Function under a contract, or if it allows its SLBE/ELBE status to be fraudulently used for the benefit of a non-SLBE firm or the owners of a non-SLBE firm so as to provide the non-SLBE firm or firm owners benefits from the Program for which the non-SLBE firm and its owners would not otherwise be entitled.

D. The EOC Program Manager shall provide written notice to the SLBE/ELBE firm whose certification has been revoked and therein state the reasons for such graduation or suspension.

## **APPEALS**

A business concern that is denied eligibility as an SLBE/ELBE, or who has its eligibility revoked, or who has been denied a waiver request can appeal the decision to the Director of Administration. A written notice of appeal must be received by the Director of Administration within 15 days of the date of the decision. Upon receipt of a timely notice of appeal, the Director of Administration, or designee (other than the EOC Program Manager), shall conduct a hearing. The decision of the Director of Administration, or designee, shall be the final decision of the City.